

Conversation Contents

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Downey Magallanes <downey_magallanes@ios.doi.gov>

From: Downey Magallanes <downey_magallanes@ios.doi.gov>
Sent: Tue Jun 06 2017 07:50:06 GMT-0600 (MDT)
To: Aaron Moody <aaron.moody@sol.doi.gov>
Subject: Fwd: BE
Attachments: 2017-06-05 PM DRAFT Short Form Memorandum National Monument Diminishment.docx

Sent from my iPhone

Begin forwarded message:

From: Cody Stewart <codystewart@utah.gov>
To: Downey Magallanes <downey_magallanes@ios.doi.gov>
Subject: Fwd: BE

I know your time is limited. This shorter document is probably going to be more helpful for you as you prepare a recommendation for this weekend than the longer piece which is probably more helpful for a final proclamation.

Please don't hesitate to call if you have any questions or if we can help in some other way.

Cody Stewart

Director of Federal Affairs
Governor Gary Herbert
801 513-8991

----- Forwarded message -----

From: Anthony Rampton <arampton@utah.gov>
Date: Tue, Jun 6, 2017 at 8:39 AM
Subject: BE
To: Cody Stewart <CodyStewart@utah.gov>
Cc: Megan Garrett <megangarrett@utah.gov>

Cody, we are still working on this but is this the sort of information you are looking for?

Tony

National Monument Diminishment Analysis

Explanation of Diminished Bears Ears National Monument Proclamation and Boundaries

June 5, 2017

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I. Features of Diminished Monument

A diminished national monument should contain sites that are of interest to monument visitors and that exemplify the types of sites present in the Bears Ears region. The area designated as a monument, however, needs to be capable of being physically protected to reduce the damage and vandalism to the present sites. The land within the monument must ensure continued access to Native Americans for traditional uses, including traditional cultural, spiritual, and material needs. In addition, for public health and resource protection, the monument must have appropriate facilities to accommodate visitors, including restroom and parking facilities and, potentially, developed camping areas. Although mineral extraction activities are not a threat and are not expected to occur in the area currently designated as the Bears Ears National Monument, a reservation of the mineral resources in the area surrounding the diminished monument will ensure that no mineral or energy exploration, development, or extraction activities degrade or threaten any monument resources.

1. Diminished National Monument Reservation Justification and Theory

To provide for an appropriate visitation experience and decrease the desire and need for visitation to other areas, a diminished monument could showcase and promote specific sites and thereby diminish the likelihood that other unpromoted sites will be visited or damaged. As suggested in one article,¹ appropriate sites may be developed and, after excavation, promoted for visitation while reducing access to other sites. Allowing visitation to an appropriate number and variety of sites that are capable of bearing heavy visitation, will reduce the likelihood that visitors will travel to more fragile, undeveloped and remote sites that cannot sustain significant visitation or use. The author explained that the promoted sites must provide a satisfactory experience, which requires that promoted sites be “made easier, more enjoyable, and more rewarding to visit than undeveloped sites.” Important factors include “[p]roviding toilet facilities places to rest along the path to the site, and good vantage points for photographs.” Other considerations include a sense that the site is pristine and undeveloped. Access to undeveloped sites should be limited and restricted.

To provide a satisfactory experience that allows visitors to see a wide variety of structures, a diminished national monument could extend along Utah Highway 95 and include the following features: the Bears Ears buttes, which have significance to Native American groups and were the primary feature identified by those supporting the monument, portions of Elk Ridge, Butler Wash Ruins, Tower Ruins, Arch Canyon, North Mule Canyon, and South Mule Canyon. The Mule Canyon area contains the House on Fire ruin and the Wall Ruin, along with other structures. The Mule Canyon areas are in a wilderness study area, which will enhance the sense that the sites in the Mule Canyons are undeveloped and pristine. On the other hand, the Butler Wash Ruins are developed and can be viewed only from a lookout across the canyon, which provides for a more developed experience. The Tower Ruins are accessible by a dirt road and a short walk. Pictures of the Butler Wash Ruins and Tower Ruins are attached. The sites within these areas are easily accessible by roads or hikes, are either outside or close to areas outside of wilderness study areas, have potential for installing appropriate facilities, and can be more effectively protected from damage and vandalism than a larger reservation.

¹ Tipps, B., *Archeology in the Grand Staircase Escalante National Monument: Research Prospects and Management Issues* (1997).

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A smaller monument, as opposed to stricter limitations within the remainder of a larger monument, limits the potential conflicts between Native American uses and the national monument designation. National monument designations often result in limited access to the national monument land. The Bears Ears National Monument proclamation prohibits the creation of “additional roads or trails designated for motorized vehicle use” unless they are for public safety purposes or for protecting monument objects. In addition, motorized and mechanized vehicle use is not allowed, except on designated trails. This may serve to limit Native Americans’ ability to collect wood by restricting the areas in which they can use motorized or mechanized vehicles to transport any wood that may be cut. In addition, the Proclamation’s vast catalogue of plant and animal resources raises questions regarding the extent to which these items will be available to Native Americans for continued use. The Proclamation itemizes resources used by Native Americans. To the extent wood, herb, and traditional plant resources mentioned in the Proclamation are deemed national monument objects, it is likely that the Native Americans’ use of these resources will be significantly limited and perhaps rendered nugatory by the creation of a landscape monument.

A diminished national monument described above will not encompass some items named in the Proclamation. Doll House Ruin does not need a reservation of land because it is located within a wilderness area and the protections afforded by a wilderness area are sufficiently restrictive for the care and management of any objects located on the wilderness land. Newspaper Rock is a state historic monument and does not need a reservation of land for its care or management. The Outlaw Trail does not need a reservation as it is not a defined “trail,” but instead an area of land over which outlaws may have passed while traveling between Monticello and Robber’s Roost. The Abajo Mountains, Monument Upwarp, and San Juan River are landscape geologic features that do not have any particular or unusual scientific interest, and are outside the scope of the original intent of the Antiquities Act. A reservation is unnecessary for the Lime Ridge Clovis Site because, although it may be an important archaeological site, it is protected by other federal laws. Similarly, to the extent Hideout Canyon contains protected archaeological or historical features, they will be protected by existing law and regulations.

Prior to the Proclamation, the Cedar Mesa area was the subject of management prescriptions specific to the area to protect fish and wildlife, cultural, and scenic resources. For these reasons, the BLM did not designate the Cedar Mesa area as an Area of Critical Environmental Concern (“ACEC”) and instead managed it as a Special Recreation Management Area (“SRMA”) with several Recreation Management Zones (“RMZ”) within the SRMA. As explained by the BLM,

Cedar Mesa will be managed as a SRMA with three specific recreational management zones created to protect cultural resources by managing visitors. Although the former Cedar Mesa ACEC is not carried forward, the area is now included in the larger Cedar Mesa SRMA in the Approved RMP. Management prescriptions that were listed for the ACEC and the proposed C-SRMA have been added to the SRMA in their entirety and these management prescriptions are sufficient to protect cultural resources. Protective management that addresses cultural resources include:

WSAs make up 71 percent of the former Cedar Mesa ACEC. These WSAs are managed under the [Interim Management Policy for Lands Under Wilderness Review] which includes closure to oil and gas leasing and OHV use and management as VRM I. These management prescriptions provide protection of cultural resources and scenic values.

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Recreation use in the Cedar Mesa Grand Gulch NHD RMZ continues to be managed by a permit system for backcountry use. Without the permit system, overuse of the area has the potential to impact high density, world-renowned cultural resources. Restrictions and management prescriptions are intended to minimize impacts from this recreation use on cultural resources. In addition to the management prescriptions for this zone, the Grand Gulch NHD has additional cultural resource protective measures to reduce impacts from recreational users on cultural resources.

Cultural resources will continue to be protected through existing laws, rules, regulations, and policies.²

Moon House Ruin, which is located on Cedar Mesa, was also the subject of special management to preserve it as a resource. The BLM created a "McLoyd Canyon-Moon House Recreation Management Zone" that required permits, limited the number of daily visitors, and closed portions of the site to visitation.³ Other management prescriptions included required education for permit holders, designated camping and hiking areas, no campfires, restricted OHV use, and a requirement to carry out human waste. Comb Ridge was also the subject of an RMZ to "manage for heritage tourism and traditional cultural values in a regulated manner."⁴ Comb Ridge was managed as a VRM Class II area; unavailable for geophysical exploration and mineral material disposal; subject to no-surface occupancy limits; closed to dispersed camping and subject to limits on campfires; and subject to group size limitations.⁵ Finally, the vast majority of Cedar Mesa's canyons, which contain archaeological resources, are managed as wilderness study areas, which provides additional protection to those areas.

Reservations were unnecessary to protect other areas of the Present Monument because were managed as ACECs before the Proclamation. The Valley of the Gods was designated as a scenic ACEC. This designation required the area to be managed under VRM Class I, closed to mineral leased and mineral material disposal, unavailable for wood gathering, closed to campfires, and closed to OHV use except on designated trails and roads.⁶ A portion of Indian Creek was designated as a scenic ACEC and another portion was designated as a SRMA. The Indian Creek ACEC is managed as a VRM Class I area, limits wood product use, is closed to OHV activities, and is "[m]anaged to limit recreation use if scenic values are being damaged."⁷ The Indian Creek SRMA limits camping activities, restricts wood product use, and proposes development of parking areas and a new campground.⁸ Lockhart Basin was not the subject of a special designation, but was managed as VRM Class I and Class II to limit impacts to visual resources.⁹ In addition, Lockhart Basin limits OHV use to designated trails and roads.¹⁰

² BLM, *Record of Decision and Approved Resource Management Plan*, 32-33 (2008) ("2008 RMP").

³ 2008 RMP, 29, REC-117.

⁴ 2008 RMP, REC-111.

⁵ 2008 RMP, REC-113.

⁶ 2008 RMP, ACEC-58.

⁷ 2008 RMP, ACEC-50.

⁸ 2008 RMP, REC-128.

⁹ 2008 RMP, 33.

¹⁰ 2008 RMP, ACEC-52.

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A reservation is also unnecessary to protect the entirety of the Hole in the Rock trail. The Present Monument does not encompass the entire trail and the majority of the trail that is within the Present Monument is encompassed within the Cedar Mesa SRMA.

Limited access and management restrictions may hinder Native Americans' traditional uses. By limiting the size of the reservation, the potential for these conflicts is avoided and their use is less likely to be regulated. Unfortunately, national monument designations often result in limited access to the national monument land. The Bears Ears National Monument proclamation prohibits the creation of "additional roads or trails designated for motorized vehicle use" unless they are for public safety purposes or for protecting monument objects. In addition, motorized and mechanized vehicle use is not allowed, except on designated trails. This may serve to limit Native Americans' ability to collect wood by limiting the areas in which they can use motorized or mechanized vehicles to transport any wood that may be cut. In addition, monument designation often results in the closure of roads. Monument managers for the Grand Staircase-Escalante National Monument closed vast numbers of roads claimed by Utah as R.S. 2477 roads within the monument boundaries, which limited access to many areas of the monument. The vast majority of the Grand Staircase-Escalante National Monument has been designated as primitive or outback and onerous rules in the land use plan strictly limit the activities available to most monument visitors.¹¹

The Proclamation's vast catalogue of plant and animal resources raises questions regarding the extent to which these items will be available to Native Americans for continued use. Due to their traditional lifestyle and impoverished conditions, many of the local Native American communities rely upon wood collected within the Present Monument to heat their homes over the winter. Similarly, the local populations use many of the herbs naturally occurring within the Present Monument in their ceremonies and for medicinal purposes. The Proclamation, however, itemizes many different plant and animal resources. Experience has shown that any item mentioned in the proclamation will be argued by special interest environmentalists to be national monument objects that must be preserved and protected. To the extent wood, herb, and traditional plant resources mentioned in the Proclamation are deemed national monument objects, it is likely that the Native Americans' use of these resources will be significantly limited and perhaps rendered nugatory by the creation of a landscape monument.

2. Mineral Withdrawal

Resources within the Present Monument were adequately and appropriately managed prior to the Proclamation using existing land use prescriptions and plans adopted by the BLM and Forest Service. The BLM and Forest Service used several different tools to manage areas believed to merit special protection. In addition to Congressionally imposed protections such as the Dark Canyon Wilderness area, land within the Present Monument was managed and, in many cases protected, using administrative tools such as wilderness study areas, inventoried roadless areas, areas of critical environmental concern, special recreation management areas, recreation management zones, visual resource management classes, and natural areas.¹²

¹¹ Although there are group size limitations imposed by the BLM under existing authorities, such as management as an RMZ, the likelihood of more restrictive designations over larger areas is significantly increased by a national monument designation, as has been experienced in the Grand Staircase-Escalante National Monument.

¹² A map showing protections existing immediately before the Proclamation is provided herewith.

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These management tools provide for more flexibility and effectively address potential resource conflicts. For example, although the BLM manages some areas for their wilderness characteristics (natural areas), it declined to manage other areas for wilderness values to account for other resource needs. As explained by the BLM,

There were many areas found to have wilderness characteristics during the inventory reviews and not selected for management of those characteristics in the Approved RMP. The reasons for this decision were varied and complex. In most cases it was because those lands were found to have other important resources or resource uses that conflict with protection, preservation, or maintenance of the wilderness characteristics. For example, some lands have existing leases that may be developed in the near future, or there may be mining claims that could be developed. In other instances, even though no valid existing rights encumbered these lands, potential for future development led to a different conclusion. Areas were not selected because they contained valid and existing rights, high mineral potential, were being managed for other uses such as right-of-way corridors, contained mechanical vegetation treatments, or are left open for firewood collection. These uses were considered as the priority when compared to protection, preservation and maintenance of the wilderness characteristics. The Approved RMP provided the best balance in allowing for uses to occur while providing for protection of resource values and public health and safety.¹³

This type of flexibility and resource management adaptability is severely limited by a national monument designation. Instead, national monument designations require land to be managed for limited uses, even if other uses and management approaches are more appropriate or necessary to preserve resources on the public land. Landscape level management decisions made by a single individual at the behest of special interest groups, moreover, is detrimental in that it deprives land management agencies with expertise in resource management of the opportunity of managing land in the most appropriate manner. A landscape monument reservation, in addition to being outside the original intent of the Antiquities Act, is an unsuitable and ineffective tool for managing public lands at the landscape level or preserving the resources that exist on those lands.

Despite the existing protections for various resources located on land within the Present Monument, many special interest groups have advocated for a landscape reservation to add an additional layer of "protection" for archaeological sites. Many of these same special interest groups have suggested that mineral development, primarily oil and gas activities, threaten archaeological sites and scenic resources. Mineral exploration, development, and extraction, however, are not significant concerns or threats to land within the Present Monument. To allay concerns expressed by environmental groups and express a commitment to preserving scenic and archaeologic resources outside a diminished monument, a mineral withdrawal is proposed for a larger area that includes the Bears Ears Buttes and headwaters, Lime Ridge Clovis Site, Moon House Ruin, Comb Ridge, portions of the San Juan River, Cedar Mesa, Valley of the Gods, Hideout Canyon, the Mossback Buttes, Beef Basin, portions of Elk Ridge, and canyons to the east of Elk Ridge. The boundary of the mineral withdrawal was drawn to track natural features, roads, watersheds, and management units to make the boundaries readily apparent from the ground and to improve management efficiencies.

¹³ 2008 RMP, 38.

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A mineral withdrawal is a more appropriate means of protecting land and resources within the Present Monument at the landscape scale. It will allow the BLM and Forest Service to use appropriate tools to manage resources located within the Present Monument while also preserving the aesthetics of the current landscape. As opposed to a national monument designation, which will likely result in significant limitations on the means by which vegetation, wildlife, grazing, and other resources and uses are managed, a mineral withdrawal will address the specific concern expressed by conservation groups while permitting the federal agencies to continue to use the full panoply of management tools available under existing authorities.

3. Increased Enforcement

The diminished national monument must be accompanied by an increase in law enforcement activities in the greater area surrounding the Bears Ears buttes. Law enforcement has been sorely lacking in the area and the sheer size of the region prevents physical protection of national monument resources. To appropriately protect the archaeological resources in the area, then, greater law enforcement in the form of more rangers and patrols, more visibility of enforcement activity, active monitoring of resources, and education regarding restrictions is necessary to protect the resources.

4. National Recreation Area

Although it is not appropriately designated as a national monument, the Indian Creek and Lockhart Basin area is of significant concern to outdoor recreationists as it is a premier destination for rock climbers and other recreational users. Second only to Yosemite, the climbing routes in this canyon are visited by thousands of people from around the world. Super Crack Butte is an iconic climbing route. Lockhart Basin is to the north of Indian Creek and is a continuation of the same canyon area contained in Canyonlands National Park. Access to the area is strictly limited and is primarily achieved through Indian Creek. The routes within the basin area used by recreational motorcyclists, jeeps, and OHV users. This area is one of the most important areas to the outdoor recreation industry in terms of the campaign to designate the Bears Ears National Monument. Patagonia, which sells outdoor recreation equipment and has spent significant funds advocating for the Present Monument, would likely deem Indian Creek to be of utmost importance.

Creating a recreation area, which may be managed primarily for recreational purposes rather than preservation, will allow for more flexibility in managing the area for multiple recreational uses than would creating a national monument. Appropriate facilities, including restrooms, trails, camping areas, and access routes, could be more easily created and managed within a recreational area. Existing uses such as OHV use, rock climbing, and camping, can continue and be managed in appropriate ways to enhance the recreational experience. Moreover, designating the area as a National Recreation Area is more legally defensible than creating a national monument, as the Indian Creek area contains far fewer archaeological resources and is essentially a scenic landscape reservation.

5. Revised National Monument Name

Local Native Americans have expressed their desire to change the name of the national monument in light of the controversy it represents and the division it has created within the tribes. Local Native Americans have proposed naming the diminished national monument the Chief Manuelito National Monument.

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ATTACHMENT

(Butler Wash Ruins and Tower Ruins Photographs)

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Butler Wash Ruins from developed overlook.



Structure at Tower Ruins.



Structure at Tower Ruins overlooking canyon.